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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,557	04/17/2001	Rolf Heiland	81666	8401
23685	7590	11/16/2005	EXAMINER	
KRIEGSMAN & KRIEGSMAN 665 FRANKLIN STREET FRAMINGHAM, MA 01702			SINGH, ARTI R	
			ART UNIT	PAPER NUMBER
			SIRA	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/836,557

Applicant(s)

HEILAND, ROLF

Examiner

Ms. Arti Singh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7 and 9-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks dated 08/29/05. Applicant's amendments to the claims have been entered. The pending claims are 1-4, 6-7 and 9-13. The 112-1 is found to be persuasive and thus the rejection is withdrawn. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-7 and 9-13 are rejected under 35 U.S.C. 103(a) obvious over US 2002/0132547 A 1 issued to Grondin et al. in view of USPN 4514463 issued to Alteepping et al. further in view of USPN 6479154 issued to Walton.

4. As set forth in the previous office action Grondin et al. was relied upon for the teachings of the polypropylene nonwoven fabric laminated to a breathable film. Said polymeric film is extrusion-coated onto the nonwoven fabric layer. Both the fabric layer and extrusion coating can be formed in a cost-effective manner on conventionally available processing equipment. By appropriate selection of the nonwoven fabric layer and film properties, the present laminate material acts as an effective barrier to liquid water and air infiltration, while providing desirable permeability to water vapor (abstract). A laminate material embodying the principles of the present invention comprises a spunbond,

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polypropylene nonwoven fabric layer, and a monolithic, polymeric breathable coating applied to the nonwoven fabric layer. The breathable coating exhibits substantial impermeability to liquid water and air, while exhibiting significant permeability to water vapor. These characteristics of the present laminate fabric facilitate its use in building construction, particularly as a barrier "housewrap" for enveloping a building being constructed. The nonwoven fabric layer of the present laminate material has a basis weight between about 60 and 100 grams/meter<sup>2</sup>, preferably between 75 and 90 grams/meter<sup>2</sup>, and is formed from polypropylene. The polymeric breathable coating of the present laminate material is extrusion-coated on the nonwoven fabric layer, and has a thickness of about 15 to 30 g/meter. Said film compositionally maybe EBA.

Grondin et al do not specifically teach the composition of the EBA consist only of an ethylene butyl acrylate copolymer wherein the butyl acrylate content is 17 wt %.

Altepping et al. disclose in their broadest interpretation a laminate suitable for use as a liner wherein the laminate comprises a batt of nonwoven polyolefin fibers, which are thermally bonded to an ethylene butylacrylate polymer (abstract) wherein their EBA film consists only of an ethylene butyl acrylate copolymer wherein the butyl acrylate content is 17 wt %. The thermoplastic coating resin which we use is an ethylene/butylacrylate copolymer having a relatively high butylacrylate content, i.e., 15-to 25 weight percent butylacrylate. This polymer works well in the process and provides good resistance to stress, abrasion, weather, water and to microorganisms. Furthermore, no plasticizer is used in the resin, an additive which is detrimental upon prolonged exposure to the elements. For instance, the abrasion resistance is approximately 20 times higher than polyvinylchloride, a resin which has been proposed for this use. The laminate is prepared by extruding the copolymer on the heat-set, non-woven fabric.

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A person having ordinary skill in the art at the time the invention was made would have found it obvious to have employed the EBA film of Altepping as the film layer in Grondin's composite. One would have been motivated to do this in order to create a composite that provides good resistance to stress, abrasion, weather and to microorganisms.

Grondin/Altepping teach what is set forth above but do not expressively suggest the property of water permeability nor that their composite is a protective hood. With regard to the properties of water permeability the Examiner is of the position that no other structural or chemical features are claimed which may distinguish the present invention from that of the Grondin/Altepping et al.'s invention, the presently claimed properties of water permeability are deemed to be inherent to the invention of Grondin et al. The burden is upon Applicant to prove otherwise. Note *In re Fitzgerald* 205 USPQ 495. Without a showing that evidences a difference between the prior art and the present invention, anticipation is proper. In addition, the presently claimed properties of water permeability would have been present once the composite of Grondin et al was provided. Note *In re Best*, 195, USPQ at 433, footnote 4 (CCPA 1977). In other words if structurally and chemically all other limitations have been met than the properties of permeability would also be met. Support of said assumption may be found in the use of similar materials. Grondin/Altepping et al.'s use the same polypropylene nonwoven which can be coated with ethylene butyl acrylate, wherein the fabric (basis weight) and the coating weight also fall into the same range as that desired by Applicant, then it is safe to presume that the properties exhibited by such a composite, in this case that of water permeability would be the same also.

With regard to the preamble limitation of the claims, that is, "A protective hood," the Examiner is of the position that; Applicant has failed to recite definite structure of said hood other than the description given on pages 1 and 5 of the instant specification,

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which in its broadest interpretation is simply a composite comprising a nonwoven with a coating. Additionally, when relying on the figures it appears to be a tarp, which in turn are generally known in the art to be composed of coated fabrics which are applied to metal substrates such as the surface of a car which is what Applicant envisions; thus the preambular language is not given weight for its intended use. Further, a recitation of intended use of the claimed invention must result in a structural difference between the claimed invention and that of the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim limitations. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458,459 (CCPA 1963). Here it is the Examiner's position that the invention of Grondin et al. is capable of being used as a protective hood for automobiles. The Examiner notes that the composite of Grondin et al is made as a barrier element for buildings which is the same thing a tarp for a car. Therefore, a skilled artisan would have found it obvious to employ the composite of Grondin/Alteeping et al.'s for use as a protective hood, motivated by the reasoned expectation of having a composite, which provides resistance to weather and abrasion.

Walton is cited to show that breathable monolithic films do exist as fabric/film composites and that EBA films do exist without any sort of additive or filler and are applied to nonwoven fabrics.

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5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

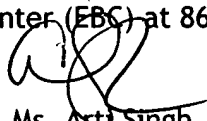
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 571-272-1483. The examiner can normally be reached on M-F 9-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ms. Arti Singh  
Primary Examiner  
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Ars 11/13/05